



September 3, 2002

Ms. Dana W. Cooley
District Attorney
132nd Judicial District
1806 25th Street, Suite 400
Snyder, Texas 79549-2530

OR2002-4927

Dear Ms. Cooley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168021.

The Borden County Sheriff's Office (the "sheriff") received a request for "all documents your office has on file concerning [a named individual]" from March 2000 through October 2001, to include information pertaining to domestic disputes, harassment, trespassing, vehicular assault, and theft. You state that the sheriff has released some of the requested information. The sheriff claims that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

We first note that the requestor seeks access to "all the documents" that the sheriff has on file concerning the named individual. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

In part, this is a request for unspecified law enforcement records that involve the named individual. That aspect of this request implicates the individual's right to privacy. Therefore, to the extent that the sheriff maintains any records that depict the named individual as a suspect, arrestee, or defendant, other than the specific information to which the requestor seeks access, all such records are private under *Reporters Committee* and must be withheld from disclosure under section 552.101 of the Government Code.

Next, we address the sheriff's claim under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 552.108(a)(2) is applicable to information relating to a closed case that concluded in a result other than a conviction or deferred adjudication. The sheriff states that Exhibits B, C, D, and E relate to investigations that did not result in a conviction or a deferred adjudication. The sheriff informs us that these records relate to closed cases in which no charges were filed. Based on the sheriff's representations, we find that section 552.108(a)(2) is applicable to Exhibits B, C, D, and E.

We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The sheriff must release basic information with regard to Exhibits B, C, D, and E, including a detailed description of each offense, under section 552.108(c). This information must be released even if it does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-187; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The sheriff may withhold the remaining information in Exhibits B, C, D, and E under section 552.108(a)(2) of the Government Code. We note that the sheriff has discretion under section 552.108 to release additional information that is not made confidential by law. See Gov't Code § 552.007; Open Records Decision No. 177 (1977).

In summary, any unspecified law enforcement records maintained by the sheriff that depict the named individual as a suspect, arrestee, or defendant must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

The sheriff may withhold Exhibits B, C, D, and E under section 552.108(a)(2), but must release basic information in accordance with section 552.108(c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

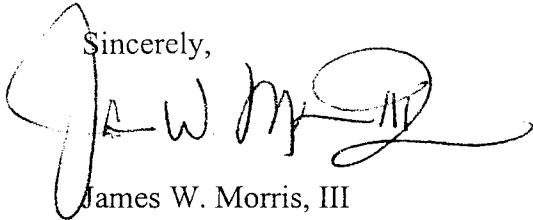
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', written over the word 'Sincerely,'.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 168021

Enc: Submitted documents

c: Ms. Nan B. Sharp
1105 County Road O
Lamesa, Texas 79331
(w/o enclosures)